Filed 9/29/16 In re D.S. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re D.S., a Person Coming Under the Juvenile Court Law.	B266677 (Los Angeles County Super. Ct. No. NJ28496)
THE PEOPLE, Plaintiff and Respondent, v. D.S., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. John C. Lawson II, Judge. Affirmed.

Mary Bernstein, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, and Rene Judkiewicz, Deputy Attorney General, for Plaintiff and Respondent.

D.S., a minor, appeals the juvenile court's order sustaining a delinquency petition after finding true the allegation D.S. committed second degree robbery. (Pen. Code,[1] § 212.5, subd. (c); Welf. & Inst. Code, § 602.) The court declared D.S. a ward of the court and ordered him placed in a camp for seven to nine months, with a maximum confinement time of five years. D.S. contends the evidence is insufficient to support the finding that he committed a robbery. We disagree and affirm.

FACTUAL BACKGROUND

Bryan's testimony

On June 20, 2015, before dark, about 8:15 p.m., 15-year-old Bryan J. was riding his bicycle home when D.S. stepped out in front of him from behind a parked recreational vehicle. Bryan and D.S. had known each other for several years and had been friends at one point. They had not seen each other in about two years, but they used to go to skate parks and have sleepovers together.

D.S. pushed Bryan forcefully in the chest. Bryan fell off the bicycle onto the ground, landing flat on his back. D.S. took the bicycle and Bryan got up and started chasing him. As D.S. got on the bicycle and started to ride away, Bryan tried to pull him off the bike, but managed only to grab D.S.'s keys. D.S. yelled that he was " 'going to buy weed' " as he rode away on Bryan's bicycle.

Bryan saw some police officers around the corner and spoke to one of them. The officer offered to file a " 'missing bike' report." Feeling the officer did not take the crime seriously and did not want to help, Bryan left and called his sister to pick him up. Bryan's sister reported the crime to police. When the police came, Bryan gave them a description of D.S. and turned over the keys he had grabbed from D.S.

The bicycle was a black and white Vilano Rampage, worth about $268, and was Bryan's prized possession. He did not give D.S. permission to take the bike, and would not even let his brother ride it. Bryan never got the bicycle back.

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[1] Undesignated statutory references are to the Penal Code.

D.S.'s testimony

D.S. testified he was across the street from a 7-Eleven store waiting for a cab when he saw Bryan riding his bike down the street. He called out to Bryan, who circled around and rode back to where D.S. was standing. The two boys shook hands and greeted each other. D.S. told Bryan he was going to the store for his mother or his grandmother and asked if he could borrow Bryan's bike for 25 to 30 minutes. D.S. gave Bryan his keys as collateral, and Bryan let D.S. take the bike. The two walked along in conversation for a few minutes until Bryan said he wanted to buy some weed. D.S. pointed out " 'the weed guy' " across the street, and rode off to the 7-Eleven store and then to a liquor store to buy cigarettes.

When D.S. returned, Bryan was gone. D.S. looked around for about 10 minutes, but finding no sign of Bryan, and not knowing where he lived, D.S. rode to his father's house and parked the bicycle there. He made no effort to look for Bryan again or return the bike.

D.S. denied pushing Bryan or forcibly taking the bicycle. He told police he had traded his keys for Bryan's bicycle. The arresting officer made D.S. write a letter to Bryan, apologizing for not returning the bicycle.

DISCUSSION

The juvenile court was entitled to credit Bryan's testimony, which constituted substantial evidence of force.

Bryan's testimony was the only evidence offered to establish the crime in this case. D.S. contends that because Bryan's testimony was not credible, there was insufficient evidence to prove the force element of robbery. He therefore asserts that the judgment should be modified to the lesser included offense of petty theft. (§ 488.) We disagree. Contrary to D.S.'s assertion, Bryan's testimony was neither inherently improbable nor lacking in credibility. The juvenile court was thus entitled to credit Bryan's testimony, which constituted substantial evidence of force and was sufficient to support the judgment.

The standard of appellate review for determining the sufficiency of the evidence supporting a juvenile court criminal judgment is the same as in an adult criminal proceeding. (*In re M.V.* (2014) 225 Cal.App.4th 1495, 1518; *In re Matthew A.* (2008) 165 Cal.App.4th 537, 540.) " 'When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.] We determine 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citation.] In so doing, a reviewing court 'presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.' " (*People v. Maciel* (2013) 57 Cal.4th 482, 514–515.)

It is not the role of the appellate court to reweigh the evidence or reevaluate witnesses' credibility. (*People v. Whisenhunt* (2008) 44 Cal.4th 174, 200; *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Indeed, "[c]onflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends." (*People v. Maury* (2003) 30 Cal.4th 342, 403.)

Citing Bryan's testimony about "the dubious manner" in which he obtained D.S.'s keys, the questionable account of his report of the incident to police immediately afterward, the police officer's unlikely failure to respond to Bryan's report of a violent crime, and Bryan's alleged motive to lie, D.S. contends that Bryan's "inherently improbable" testimony was legally insufficient to support the judgment.

"While an appellate court can overturn a judgment when it concludes the evidence supporting it was 'inherently improbable,' such a finding is so rare as to be almost nonexistent. ' "To warrant the rejection of the statements given by a witness who has

been believed by a trial court, there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions." [Citation.] Such cases are rare indeed.' " (*People v. Ennis* (2010) 190 Cal.App.4th 721, 728–729; see also *People v. Fierro* (2010) 180 Cal.App.4th 1342, 1347). Applying the inherently improbable standard, we examine the basic content of the testimony itself, but we do not assess the credibility of the witness. "In other words, the challenged evidence must be improbable ' "on its face." ' " (*People v. Ennis*, *supra*, at p. 729; *People v. Mayberry* (1975) 15 Cal.3d 143, 150.)

Here, Bryan testified consistently that D.S. stepped in front of him and forcefully pushed him in the chest, causing him to fall off his bicycle. When Bryan tried unsuccessfully to pull D.S. off of his bike, he somehow came away with D.S.'s keys. Bryan never got his bike back after D.S. took it from him. None of the elements of Bryan's account appears improbable on its face, much less obviously false without resort to inference or deduction. Indeed, D.S.'s argument amounts to nothing more than grounds for finding Bryan's testimony less than credible. But such credibility determinations are not the appellate court's to make. (*People v. Maury*, *supra*, 30 Cal.4th at p. 403; *People v. Ochoa*, *supra*, 6 Cal.4th at p. 1206.)

Robbery is "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." (§ 211.) Bryan's consistent testimony that D.S. forcibly took the bicycle against Bryan's will established the crime committed was robbery, not petty theft as D.S. maintains. And we find nothing inherently improbable or incredible about Bryan's testimony, particularly when viewed along with D.S.'s own contradictory and dubious narrative.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.